

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

MARIA SAKELLARIS TRUSTEE
REVOCABLE TRUST

Respondent

Case Nos.: I-00-20382
I-00-20278

ORDER OF DISMISSAL

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-20382) served by first-class mail on January 30, 2002, the Government charged Respondent Maria Sakellaris Trustee Revocable Trust with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that Respondent violated § 700.3 on January 30, 2002 at 6405 Chillum Place, N.W., and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on March 5, 2002, this administrative court issued an order finding Respondent in default, assessing a statutory penalty

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

of \$1,000 as required by D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (00-20278) on March 8, 2002. On March 11, 2002, Respondent filed pleas of Deny to the first and second Notices of Infraction pursuant to D.C. Official Code § 2-1801.02(a)(3), along with a request for a hearing.

An evidentiary hearing was held on May 9, 2002. Jermaine Carter, the charging inspector in the captioned case, appeared on behalf of the Government. Dennis Jiffa, part-owner and manager of the subject property, appeared on behalf of Respondent. At the start of the hearing, the Government moved to dismiss the charge set forth in the Notices of Infraction on the grounds that it had incorrectly identified the address of the subject property and, as such, did not have sufficient evidence to meet its statutory burden of proof. *See* D.C. Official Code § 2-1802.03(a). The Government also offered an apology to Respondent for the error. Hearing no objection from Respondent, I granted the Government's motion.

As to the assessed statutory penalty for Respondent's failure to timely answer the first Notice of Infraction, Mr. Jiffa testified that the envelope mailed by the Government containing the first Notice of Infraction was improperly addressed, in that Respondent's city of "Silver Spring" was written on the same line as Respondent's street address. *See* RX 202. Mr. Jiffa testified that he spoke with a representative of the Silver Spring, MD, branch office of the United States Postal Service who advised him that an envelope addressed in such a fashion would not be read by the regular mail scanners and would be "kicked out" into an exception bin for later sorting. This would result in a delay in delivering the mail. Mr. Jiffa further testified that Respondent did not receive the first Notice of Infraction until February 26, 2002, nearly a month

after it was certified served by the Government, and well after the allotted time to timely respond had elapsed. *See* D.C. Official Code §§ 2-1802.02(e) and 2-1802.05.

In response to Respondent's explanation, the Government recommended that the statutory penalty be reduced, and reiterated its request that the case be dismissed. Finding good cause for Respondent's failure to timely respond to the first Notice of Infraction, I will vacate the assessed statutory penalty. *See* D.C. Official Code § 2-1802.02(f).

Therefore, based upon the entire record of this matter, it is hereby this ____ day of _____, 2002:

ORDERED, that Notices of Infraction 00-20382 and 00-20278 are hereby **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the statutory penalty of \$1,000 assessed by this administrative court's order of March 5, 2002 is hereby **VACATED**; and it is further

ORDERED, that there being no other issues pending in this case, the OAH Clerk shall mark this matter as **CLOSED**.

/s/ **05/17/02**

Mark D. Poindexter
Administrative Judge